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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 38896
)	
v.)	
)	
WILLIAM FRANKLIN WOLFE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF IDAHO

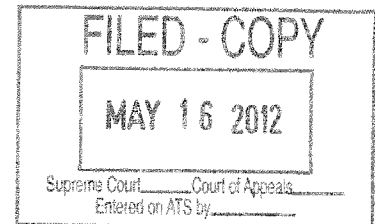
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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	2
ISSUE PRESENTED ON APPEAL	7
ARGUMENT	8
The District Court Erred When It Denied Mr. Wolfe's Motion For Reconsideration Of His Rule 35 Motion Alleging An Illegal Sentence, And When The District Court Denied Mr. Wolfe's Subsequent Rule 35 Motion Alleging An Illegal Sentence	8
A. Introduction	8
B. Standard Of Review	9
C. The District Court Abused Its Discretion When It Denied Mr. Wolfe's Motion For Reconsideration Of The Denial Of His Rule 35 Motion Alleging An Illegal Sentence	9
1. The District Court Erred When It Denied Mr. Wolfe's Motion For Reconsideration Of The Denial Of His Rule 35 Motion Because The District Court Erroneously Applied The Doctrine Of <i>Res Judicata</i> To Determine That It Would Not Adjudicate The Merits Of This Motion	9
2. The District Court Erred When It Denied Mr. Wolfe's Motion For Reconsideration Of The Denial Of His Rule 35 Motion Because The District Court, In Ruling On The Underlying Rule 35 Motion, Had Failed To Adjudicate The Merits Of Mr. Wolfe's Claim Based Upon The Erroneous Belief That This Motion Was Untimely	11

3. The District Court Abused Its Discretion In Denying Mr. Wolfe's Motion For Reconsideration Of His Rule 35 Motion Alleging An Illegal Sentence Because The District Court Tendered Its Decision Based Upon An Incorrect Understanding Of The Record In This Case.....	12
D. The District Court Erred When It Denied Mr. Wolfe's Successive Rule 35 Motion Alleging An Illegal Sentence Because The District Court Erroneously Held That Only One Rule 35 Motion Alleging An Illegal Sentence Is Permitted In A Case	13
E. The District Court Erred In Denying Mr. Wolfe's Motion For Reconsideration And Subsequent Rule 35 Motion Alleging An Illegal Sentence Because The Record In This Case Reveals That There Was No Subject Matter Jurisdiction For The Criminal Charge And Subsequent Criminal Conviction For Murder In This Case	15
CONCLUSION.....	23
CERTIFICATE OF MAILING	24

TABLE OF AUTHORITIES

Cases

<i>Boyer v. Shoshone-Bannock Indian Tribes</i> , 92 Idaho 257 (1968)	17
<i>Capps v. Wood</i> , 117 Idaho 614 (Ct. App. 1990)	10
<i>Fearn v. Steed</i> , 151 Idaho 295 (2011)	13
<i>Lewis v. State</i> , 137 Idaho 882 (2002)	21
<i>State v. Allen</i> , 100 Idaho 918 (1980)	17
<i>State v. Ambro</i> , 142 Idaho 77 (Ct. App. 2005)	17
<i>State v. Armstrong</i> , 146 Idaho 372 (Ct. App. 2008)	11
<i>State v. Barros</i> , 131 Idaho 379 (1998)	17
<i>State v. Lute</i> , 150 Idaho 837 (2011)	<i>passim</i>
<i>State v. Major</i> , 111 Idaho 410 (1986)	17, 19, 20, 23
<i>State v. Mathews</i> , 133 Idaho 300 (1999)	17, 18, 19
<i>Steiner v. Gilbert</i> , 144 Idaho 240 (2007)	13
<i>Systems Associates, Inc. v. Motorola Communications and Electronics, Inc.</i> , 116 Idaho 615 (1989)	11
<i>Ticor Title Co. v. Stanion</i> , 144 Idaho 119 (2007)	11
<i>U.S. v. LaBuff</i> , 658 F.3d 873 (9th Cir. 2011)	<i>passim</i>
<i>U.S. v. Maggi</i> , 598 F.3d 1073 (9th Cir. 2010)	21
<i>Wolfe v. Farm Bureau Ins. Co.</i> , 128 Idaho 398 (1996)	11

Statutes

18 U.S.C. § 1151	20
18 U.S.C. § 1152	9, 18

18 U.S.C. § 1153	18
18 U.S.C. §§ 1502, 1503	20
25 U.S.C. § 1321	18
I.C. § 67-5101	18, 19
I.C. § 67-5102	19
I.C. 9-101(8)	20

Constitutional Provisions

IDAHO CONST. Art. 21, § 19	17
----------------------------------	----

Rules

I.C.R. 35(a)	15
I.C.R. 35(b)	15

Other Authorities

http://www.nezperce.org/RezInfo/NPreservation.htm	20
http://www.nimiipuuhealth.org/	22
Point I(C)(3) <i>infra</i>	11

STATEMENT OF THE CASE

Nature of the Case

William Wolfe was originally convicted of first degree murder following a jury trial and was sentenced to fixed life in 1982. However, many years later, Mr. Wolfe discovered that his alleged offense occurred on tribal grounds and that the alleged victim¹ was an "Indian"², thus depriving the Idaho courts of subject matter jurisdiction to bring the specific criminal charge in this case or to obtain a criminal conviction against him. Although he tried many times, and through numerous avenues, to obtain a hearing on the merits of his claim that the district court lacked subject matter jurisdiction in his case, Mr. Wolfe has never had the actual substance of his claims adjudicated by any court.

This case comes before this Court upon the denial of Mr. Wolfe's motion for reconsideration of the denial of his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion to correct an illegal sentence, and upon the court's subsequent denial of Mr. Wolfe's successive Rule 35 motion alleging an illegal sentence. The district court did not consider the merits of Mr. Wolfe's motion to reconsider the denial of his initial Rule 35 motion under the erroneous belief that the merits of Mr. Wolfe's jurisdictional claim had previously been addressed in prior post-conviction proceedings. The district court did not consider the merits of Mr. Wolfe's second Rule 35 motion based upon the erroneous

¹ Given that some of the evidence in this case involves private information regarding the alleged victim that has been submitted to the Idaho Supreme Court under seal, Mr. Wolfe will not herein refer to the alleged victim by name.

² Mr. Wolfe acknowledges that the term "Indian," when used in reference to persons of Native American ancestry, has garnered some disfavor in modern usage. However, this term is used within this brief because it appears to be a legal term of art with regard to determinations of subject matter jurisdiction for criminal offenses occurring on tribal lands, or "Indian country," that involve members of recognized Native American tribes. Wolfe intends no disrespect through his use of this term.

conclusion that a defendant cannot file more than one Rule 35 motion alleging an illegal sentence. In both instances, the district court erred in its denial of Mr. Wolfe's motions.

A proper review of Mr. Wolfe's motions, including the record of the post-conviction proceedings relied upon by the trial court in finding that *res judicata* principles barred further review, demonstrates that the district court in Mr. Wolfe's original criminal proceedings lacked subject matter jurisdiction to entertain the criminal proceedings in this case. Accordingly, Mr. Wolfe asks that this Court vacate his judgment of conviction and sentence. In the alternative, Mr. Wolfe asks that this Court remand his case to the district court for an evidentiary hearing on Mr. Wolfe's Rule 35 motions regarding the lack of subject matter jurisdiction in this case.

Statement of the Facts and Course of Proceedings

William Wolfe's long, and unsuccessful, series of attempts at obtaining a hearing on his claim that the State district court in Idaho lacked subject matter jurisdiction over the underlying criminal proceedings in his case began in 2004, when Mr. Wolfe filed an Idaho Criminal Rule 35 motion alleging an illegal sentence. In December 2004, Mr. Wolfe filed a *pro se* motion alleging an illegal sentence pursuant to Rule 35 based upon the absence of subject matter jurisdiction. (R., pp.31-32.) In his motion, Mr. Wolfe asserted that he had received an illegal sentence because exclusive jurisdiction for his alleged offense was vested exclusively in the federal courts. (R., p.32.) He further filed a memorandum in support of this motion that noted that the district court may correct an illegal sentence at any time. (R., p.37.)

Thereafter, but before the district court ruled on the merits of Mr. Wolfe's Rule 35 motion, Mr. Wolfe also filed a successive petition seeking post-conviction relief. (R., pp.3-8.) Mr. Wolfe had been convicted of first degree murder and sentenced by the

Idaho County district court on August 5, 1982. (R., p.3.) In his *pro se* successive petition, Mr. Wolfe originally raised his claim of the lack of subject matter jurisdiction as a claim of ineffective assistance of counsel – *i.e.*, that his trial counsel was ineffective for failing to object to the lack of subject matter jurisdiction. (R., pp.4-6.) However, the substance of his claims asserted the absence of subject matter jurisdiction given that his charged offense occurred on tribal grounds and the alleged victim was an Indian, thereby divesting the State court of jurisdiction. (R., pp.4-6.)

Initially, the district court recognized the seriousness of Mr. Wolfe's claims and further recognized that his assertion of the absence of subject matter jurisdiction could well be valid, given that the alleged murder occurred within the Nez Perce Indian reservation. (R., pp.9-14.) After analyzing the controlling provisions of Idaho State and federal law governing the question, the district court concluded:

Mr. Wolfe's argument that the State did not have jurisdiction to convict him of murder has merit under 18 U.S.C. § 1152. Setting aside a conviction for first degree murder is serious business and should not be lightly undertaken. As a result, I want this issue to be fully briefed and argued before I make a decision. I, therefore, am going to require the State and request the Nez Perce tribe to submit briefs on this issue.

R., p.13 (emphasis added).

However, the district court never ruled on the merits of Mr. Wolfe's claim of an absence of subject matter jurisdiction as alleged in his post-conviction petition. Well over one year later, the district court entered an order denying Mr. Wolfe's post-conviction petition. (R., pp.375-394.) In the process of reviewing Mr. Wolfe's petition, the district court ordered and reviewed the military and medical records of the alleged victim in Mr. Wolfe's murder case in order to determine whether the victim was an Indian for purposes of determining whether the State of Idaho had jurisdiction.

(R., p.380.) These records indicated that the alleged victim would qualify as an Indian.
(R., p.380.)

Despite this, the district court did not dismiss Mr. Wolfe's petition for post-conviction relief based upon an adjudication of the merits of Mr. Wolfe's claim. Instead, the court's sole rationale was that Mr. Wolfe's post-conviction petition was not timely filed and that none of the exceptions to the statute of limitations for post-conviction actions applied in Mr. Wolfe's case. (R., pp.383-394.) In fact, the district court's ultimate ruling on this petition was that interests in the finality of judgments trumped any claim of the absence of subject matter jurisdiction.³ (R., pp.392-394.) Accordingly, the merits of Mr. Wolfe's subject matter jurisdiction claim remained undecided, despite numerous acknowledgements by the district court that the record indicated his arguments may be meritorious.

Following the dismissal of his post-conviction petition, the district court likewise, and erroneously, denied his Rule 35 motion based upon the court's belief that the motion was untimely. (R., p.49.) Therefore, the district court once again failed to reach the merits of Mr. Wolfe's claim that there was no subject matter jurisdiction for the criminal proceedings in his case.

Following the district court's erroneous determination that Mr. Wolfe's Rule 35 motion alleging an illegal sentence was untimely, Mr. Wolfe filed a *pro se* motion asking the court to reconsider its denial. (R., p.50.) In a memorandum submitted in support of this motion, Mr. Wolfe specifically noted the district court erred in denying his motion as

³ It does not appear from the record that Mr. Wolfe appealed from the district court's adverse decision in that post-conviction action.

untimely, given that a defendant can raise a claim of an illegal sentence at any time under Rule 35. (R., p.54.)

Mr. Wolfe's *pro se* motion for reconsideration, filed within two weeks of the district court's denial of his Rule 35 motion, languished undecided with the court for over six years. (R., pp.50, 289.) After receiving no answer from the court, Mr. Wolfe then filed a motion asking for the district court to schedule a hearing on his motion for reconsideration. (R., p.289.) He also submitted a recent Idaho Supreme Court Opinion, *State v. Lute*,⁴ to the trial court as support for his motion for reconsideration of the denial of his Rule 35 motion. (R., pp.290-297.)

This motion, too, was dismissed by the district court. (R., pp.298-299.) However, this time the dismissal was based upon a different error by the trial court – the court denied Mr. Wolfe's motion for reconsideration based upon the finding that his legal merits of his substantive claims had already and actually been decided by the district court in his post-conviction petition and Rule 35 motion:

The Court **fully addressed all issues** raised by Mr. Wolfe in both his Motion for relief pursuant to ICR 35 and his Petition for Post-Conviction Relief in its Memorandum Opinion of October 26, 2006. All of Mr. Wolfe's claims for relief were dismissed by the Court's Order of December 21, 2006, including his claim that the State of Idaho lacked subject matter jurisdiction.

Mr. Wolfe's request for a hearing on his Motion for relief pursuant to ICR 35 that he filed in December 2004 is DENIED on the grounds and for the reasons that he has already had a hearing on that Motion and it was Denied.

(R., p.299 (emphasis added).)

Still undaunted, Mr. Wolfe made yet another attempt at having his claim of a lack of subject matter jurisdiction heard. Mr. Wolfe filed another *pro se* Rule 35 motion

⁴ *State v. Lute*, 150 Idaho 837 (2011).

alleging an illegal sentence. (R., pp.328-364.) He also attached numerous documents to his motion, including a map of the Nez Perce reservation that showed the town where the murder was alleged to have occurred is within this reservation, documents from a different criminal case – but occurring in the same town as Mr. Wolfe’s charged offense - in which the prosecutor dismissed the charges based upon the absence of subject matter jurisdiction in Idaho State courts, documents showing the alleged victim in this case was an Indian for purposes of determining jurisdiction, and the Resolution entered into between the Nez Perce tribe and the State of Idaho governing which offenses may be tried in State courts if they occurred on tribal lands. (R., pp.328-364.)

Once again, the district court dismissed Mr. Wolfe’s motion without making any determination on the merits of his claim that his sentence was illegal due to the absence of subject matter jurisdiction. (R., p.365.) The district court did so based upon a third, and likewise erroneous, rationale: that, “[t]he petitioner is only permitted to file one (1) motion under ICR 35.” (R., p.365.) As before, the court never considered the substantive merits of Mr. Wolfe’s claim that his sentence was illegal because there was no subject matter jurisdiction for his charged offense.

Mr. Wolfe timely appeals from the district court’s order denying his motion for reconsideration of the denial of his Rule 35 motion, as well as from the court’s order denying his subsequent Rule 35 motion alleging an illegal sentence.⁵ (R., p.300.)

⁵ Mr. Wolfe filed his Notice of Appeal on June 9, 2011 – prior to the filing of his subsequent Rule 35 motion alleging an illegal sentence on June 17, 2011. (R., pp.300, 328.) However, the filing of a notice of appeal is deemed to subsume all final judgments or orders entered after the judgment or order appealed from, other than orders either granting probation or relinquishing jurisdiction following a period of retained jurisdiction. I.A.R. 17(e)(1)(c); *State v. Fortin* 124 Idaho 323, 326 (Ct. App. 1993). Accordingly, the district court’s subsequent denial of Mr. Wolfe’s successive Rule 35 motion alleging an illegal sentence is properly before this Court in this appeal.

ISSUE

Did the district court err when it denied Mr. Wolfe's motion for reconsideration of his Rule 35 motion alleging an illegal sentence, and when the district court denied Mr. Wolfe's subsequent Rule 35 motion alleging an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Wolfe's Motion For Reconsideration Of His Rule 35 Motion Alleging An Illegal Sentence, And When The District Court Denied Mr. Wolfe's Subsequent Rule 35 Motion Alleging An Illegal Sentence

A. Introduction

Mr. Wolfe asserts that the district court erred both in denying his motion for reconsideration of the denial of his initial Rule 35 motion alleging an illegal sentence due to the absence of subject matter jurisdiction, and in denying his subsequent Rule 35 motion alleging the same. The district court's denials were predicated upon an erroneous understanding of the legal standards attendant to a Rule 35 motion that alleges an illegal sentence – particularly where the illegality alleged is the absence of subject matter jurisdiction for the underlying criminal proceedings.

Additionally, Mr. Wolfe asserts that the record in this case demonstrates the absence of subject matter jurisdiction in Idaho state court for Mr. Wolfe's underlying conviction for murder. This offense was alleged to have occurred on the Nez Perce Reservation, which constitutes Indian country for purposes of determining jurisdiction. The Nez Perce tribe has specifically declined to grant consent to the State of Idaho to prosecute this offense when it occurs within tribal grounds and involves an Indian. Finally, the record shows that the victim in this case was an Indian for purposes of establishing federal jurisdiction under the General Crimes Act, 18 U.S.C. § 1152. Given this, the State of Idaho lacked subject matter jurisdiction to try or to convict Mr. Wolfe for murder in state court, as exclusive jurisdiction over this offense rested with the federal courts.

B. Standard Of Review

“Idaho Criminal Rule 35 allows a trial court to correct an illegal sentence at any time.” *State v. Lute*, 150 Idaho 837, 839 (2011). Both the question of whether a sentence is illegal and the question of whether the trial court had subject matter jurisdiction over the proceedings are issues of law that this Court reviews *de novo*. *Id.*

C. The District Court Abused Its Discretion When It Denied Mr. Wolfe’s Motion For Reconsideration Of The Denial Of His Rule 35 Motion Alleging An Illegal Sentence

1. The District Court Erred When It Denied Mr. Wolfe’s Motion For Reconsideration Of The Denial Of His Rule 35 Motion Because The District Court Erroneously Applied The Doctrine Of *Res Judicata* To Determine That It Would Not Adjudicate The Merits Of This Motion

In denying Mr. Wolfe’s motion for reconsideration of the denial of his initial Rule 35 motion, alleging an illegal sentence, the district court held that his challenge to subject matter jurisdiction “was fully addressed” both in his prior post-conviction proceedings and in the underlying Rule 35 motion. (R., pp.298-299.) In addition to being factually erroneous, this ruling was contrary to the legal standards attendant on the court’s discretion, as principles of *res judicata* do not apply under Idaho law where the legal question at issue is one of subject matter jurisdiction.

The doctrine of *res judicata* generally precludes relitigation of a matter previously adjudicated. See, e.g., *Capps v. Wood*, 117 Idaho 614, 618 (Ct. App. 1990). However, this rule “is premised upon entry of a **valid** and final judgment.” *Id.* (emphasis added). Indisputably, a judgment rendered without subject matter jurisdiction is not valid. *Lute*, 150 Idaho at 840. Additionally, the issue of subject matter jurisdiction is so fundamental that the parties cannot consent to the assumption of such jurisdiction where it is lacking, or be estopped from asserting its absence. *State v. Armstrong*, 146 Idaho 372, 374

(Ct. App. 2008). In light of these principles, the Idaho Supreme Court has held that the doctrine of *res judicata* does not apply to litigation of the issue of whether the trial court had jurisdiction over the matter. See *Wolfe v. Farm Bureau Ins. Co.*, 128 Idaho 398, 403 (1996); *Systems Associates, Inc. v. Motorola Communications and Electronics, Inc.*, 116 Idaho 615, 617 (1989).

The district court in this case denied Mr. Wolfe's motion for reconsideration of the denial of his Rule 35 motion – in which he alleged an illegal sentence due to the absence of subject matter jurisdiction – on the basis of *res judicata*. This was legal error because *res judicata* does not apply to claims of an absence of subject matter jurisdiction. However, this ruling was also erroneous for another reason: the district court in both Mr. Wolfe's prior post-conviction and in his underlying Rule 35 motion never actually decided the substantive merits of his claim of an illegal sentence.

The doctrine *res judicata* only applies to preclude further consideration of an issue if that issue was actually decided on the merits. See *Ticor Title Co. v. Stanion*, 144 Idaho 119, 124 (2007). Even assuming that the doctrine of *res judicata* applies to issues of subject matter jurisdiction – which it does not – the doctrine would not apply in the first instance in this case because the district court **never actually decided the merits** of Mr. Wolfe's claim of the absence of subject matter jurisdiction in his initial Rule 35 motion. See Point I(C)(3) *infra*. Accordingly, because Mr. Wolfe's underlying Rule 35 motion alleged that his sentence was illegal because of a lack of subject matter jurisdiction, the district court erred when it denied Mr. Wolfe's motion seeking reconsideration of the denial of his Rule 35 motion on the basis of *res judicata*.

2. The District Court Erred When It Denied Mr. Wolfe's Motion For Reconsideration Of The Denial Of His Rule 35 Motion Because The District Court, In Ruling On The Underlying Rule 35 Motion, Had Failed To Adjudicate The Merits Of Mr. Wolfe's Claim Based Upon The Erroneous Belief That This Motion Was Untimely

Mr. Wolfe filed his motion for reconsideration of the denial of his Rule 35 motion partly on the basis that the district court erred when it found this motion to be untimely. (R., pp.49, 54-55.) Because Mr. Wolfe's Rule 35 motion had alleged an illegal sentence due to the absence of subject matter jurisdiction, and because such a motion can be filed at any time, the district court erred when it denied Mr. Wolfe's motion for reconsideration of the court's ruling.

As has been noted, I.C.R. 35 allows a trial court to correct an illegal sentence at any time. *Lute*, 150 Idaho at 839. In fact, when the illegality alleged regarding a criminal sentence is one relating to the absence of subject matter jurisdiction for the underlying criminal charge, the trial court retains jurisdiction to entertain a Rule 35 motion even after the underlying criminal sentence has been fully served by the defendant. *Id.* at 839-840.

Here, the sole ground for the district court's denial of Mr. Wolfe's motion that alleged an illegal sentence was that the motion was "untimely." (R., pp.31-32, 49.) This ruling was error as a matter of law, as was pointed out by Mr. Wolfe. (R., pp.54-55.) Accordingly, the district court erred when it denied Mr. Wolfe's motion for reconsideration regarding that motion.

3. The District Court Abused Its Discretion In Denying Mr. Wolfe's Motion For Reconsideration Of His Rule 35 Motion Alleging An Illegal Sentence Because The District Court Tendered Its Decision Based Upon An Incorrect Understanding Of The Record In This Case

Mr. Wolfe also asserts that the district court erred in denying his motion to reconsider the denial of his Rule 35 motion because the court did so in reliance on clearly erroneous findings of fact regarding the factual and procedural history in this case.

This Court reviews a trial court's findings of fact for whether these findings are clearly erroneous. See, e.g., *Steiner v. Gilbert*, 144 Idaho 240, 243 (2007). A factual finding is clearly erroneous if it is not supported by substantial and competent evidence. *Id.* "Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion." *Fearn v. Steed*, 151 Idaho 295, 298 (2011).

In this case, the district court denied Mr. Wolfe's motion for reconsideration based upon the court's erroneous belief that the court "**fully addressed all issues raised by Mr. Wolf[e]** in both his Motion for relief pursuant to ICR 35 and his Petition for Post-Conviction Relief in its Memorandum Opinion of October 26, 2006." (R., pp.298-299.) This finding was not supported at all by the record in this case, and therefore was clearly erroneous.

In Mr. Wolfe's post-conviction action, the district court appears to have acknowledged the merits of Mr. Wolfe's assertion that there was no subject matter jurisdiction for the criminal proceedings that culminated in his conviction for murder. (R., pp.13, 380, 392.) In fact, after noting that the city of Stites (where Mr. Wolfe's alleged offense occurred) was within the Nez Perce reservation, the district court found that, "[t]he evidence now available persuades me that there is a genuine issue of whether the court had had jurisdiction because there is credible admissible evidence

that [the alleged victim] was Native American.” (R., p.392.) However, the district court ultimately concluded that the interests in the finality of Mr. Wolfe’s conviction trumped the potential absence of subject matter jurisdiction in his case; and that his post-conviction petition would therefore be deemed untimely. (R., pp.392-394.) Accordingly, the district court never addressed the substantive merits of Mr. Wolfe’s claim of an absence of subject matter jurisdiction, but rather found that these claims were waived by not being timely asserted.

Similarly, the district court did not reach the substantive merits of Mr. Wolfe’s claim of an illegal sentence under I.C.R. 35 in light of the alleged absence of subject matter jurisdiction. (R., pp.31-32.) Instead, the district court erroneously ruled that his Rule 35 motion was untimely, despite the fact that I.C.R. 35 expressly provides that a motion alleging an illegal sentence may be raised at any time. (R., p.49.) Accordingly, the district court never adjudicated the substantive merits of Mr. Wolfe’s claims of an illegal sentence brought under his Rule 35 motion filed in December, 2004.

The record in this case conclusively demonstrates that the district court did not “fully address” the substantive issues raised by Mr. Wolfe in his post-conviction petition and his Rule 35 motion regarding the absence of subject matter jurisdiction. Accordingly, the district court’s factual finding that this occurred – which formed the primary basis for the court’s denial of Mr. Wolfe’s motion for reconsideration – was clearly erroneous.

D. The District Court Erred When It Denied Mr. Wolfe’s Successive Rule 35 Motion Alleging An Illegal Sentence Because The District Court Erroneously Held That Only One Rule 35 Motion Alleging An Illegal Sentence Is Permitted In A Case

The district court additionally erred when it refused to entertain the merits of Mr. Wolfe’s successive Rule 35 motion, alleging an illegal sentence due to the absence

of subject matter jurisdiction, based upon the court's conclusion that, "[t]he petitioner is only permitted to file one (1) motion under ICR 35." (R., p.365.) However, Mr. Wolfe's successive Rule 35 motion alleged that he had received an illegal sentence, and therefore his motion was permitted both under the express terms of I.C.R. 35 and under case law interpreting this rule as it relates to the issue of subject matter jurisdiction. (See R., pp.328-329.)

Idaho Criminal Rule 35 does provide for one limitation as to the number of motions that may be filed under this Rule – that, "no defendant may file more than one motion **seeking a reduction of sentence** under this Rule." I.C.R. 35(b) (emphasis added). By the plain terms of this rule, this provision does not apply to claims of an illegal sentence brought pursuant to I.C.R. 35(a). I.C.R. 35(a).

The fact that a successive motion alleging an illegal sentence is properly justiciable is further demonstrated by the *Lute* Opinion. In *Lute*, the defendant filed a second Idaho Criminal Rule 35 motion alleging an illegal sentence well after the defendant had served his entire sentence, and claimed in this successive motion that his sentence was illegal due to the absence of subject matter jurisdiction. *Lute*, 150 Idaho at 838-839. The Court in *Lute* did not find that the defendant's successive Rule 35 motion was not permitted by the Idaho Criminal Rules. To the contrary, the Court found that the district court had jurisdiction to consider the defendant's claim of an illegal sentence despite the fact that a prior Rule 35 motion had been filed in that case – "where a court properly has jurisdiction to consider a case – **as it does here to consider Lute's I.C.R. 35 motion** – and it is apparent that there is an issue concerning subject matter jurisdiction or that a defendant was convicted of something that is not a crime, this Court must correct that error." *Lute*, 150 Idaho at 840 (emphasis added).

Mr. Wolfe's successive Rule 35 motion, alleging an illegal sentence based upon a lack of subject matter jurisdiction, was properly before the district court. The trial court erred, as a matter of law, when the court failed to rule on the merits of Mr. Wolfe's Rule 35 motion alleging an illegal sentence on the basis that Mr. Wolfe had previously filed an earlier Rule 35 motion. Accordingly, Mr. Wolfe submits that this Court should vacate the district court's order denying his successive Rule 35 motion alleging an illegal sentence.

E. The District Court Erred In Denying Mr. Wolfe's Motion For Reconsideration And Subsequent Rule 35 Motion Alleging An Illegal Sentence Because The Record In This Case Reveals That There Was No Subject Matter Jurisdiction For The Criminal Charge And Subsequent Criminal Conviction For Murder In This Case

Mr. Wolfe further asserts that the record in this case is sufficiently developed so as to establish that the trial court in his underlying criminal proceedings for murder was without subject matter jurisdiction to try Mr. Wolfe on this charge, or sentence him upon his conviction. Because the district court properly had jurisdiction to consider Mr. Wolfe's claim that the trial court lacked subject matter jurisdiction, this Court likewise has the authority to decide Mr. Wolfe's claims regarding subject matter jurisdiction. Therefore, because it is apparent that there was no subject matter jurisdiction in Idaho state court for the offense of murder as alleged in this case, Mr. Wolfe asks that this Court reverse the district court's orders denying his Rule 35 motions and remand this case to the district court with instructions to vacate his conviction. *See Lute*, 150 Idaho at 840-841.

Mr. Wolfe's jurisdictional claim in this case involves the interplay of state and federal law with regard to certain criminal charges that occur within Indian country and that involve Indians in the commission of the offense:

Criminal jurisdiction over Indians is divided among federal, state, and tribal governments. A determination of whether one or more of these sovereigns possesses criminal jurisdiction in a particular instance depends upon the type of offense committed, where the offense was committed, and whether either the perpetrator or the victim is an Indian.

State v. Mathews, 133 Idaho 300, 310 (1999).

The federal government, and Congress in particular, possesses plenary authority over Indian affairs, and this authority extends to crimes occurring on tribal lands. *Id.* at 311. “As a corollary to federal sovereignty it is clear that state law has no force and effect, except as granted by federal law, within the territory of an Indian tribe in matters affecting Indians.” *Boyer v. Shoshone-Bannock Indian Tribes*, 92 Idaho 257, 260 (1968). “States have no jurisdiction over Indians in Indian country absent the clear consent of Congress.” *State v. Major*, 111 Idaho 410, 416 (1986). Additionally, the Idaho State Constitution “expressly recognizes that the Indian lands within the boundaries of the state ‘shall remain under the absolute jurisdiction and control of the congress of the United States.’” *State v. Allen*, 100 Idaho 918, 922 (1980); IDAHO CONST. Art. 21, § 19. In light of this, the State bears the burden to establish jurisdiction over an Indian in Indian country, or to establish that the tribe has consented to the State’s jurisdiction *Major*, 111 Idaho at 418. Additionally, this Court narrowly construes any statute purporting to extend state jurisdiction over Indian country. *State v. Barros*, 131 Idaho 379, 382 (1998); *State v. Ambro*, 142 Idaho 77, 81 (Ct. App. 2005).

In the exercise of its plenary authority over Indian affairs, Congress enacted two primary provisions regarding subject matter jurisdiction over crimes occurring within Indian country. *Id.* First, Congress enacted the General Crimes Act, 18 U.S.C. § 1152,⁶

⁶ This statutory provision provides in pertinent part that, “[e]xcept as otherwise provided by law, the general laws of the United States as to the punishment of offenses

which extends federal jurisdiction and the application of federal criminal law over crimes committed by non-Indians against Indians in Indian country. 18 U.S.C. § 1152; *U.S. v. LaBuff*, 658 F.3d 873, 877 (9th Cir. 2011); *Mathews*, 133 Idaho at 311. The second provision enacted by Congress regarding the commission of criminal offenses within Indian country is the Major Crimes Act, which provides exclusive federal jurisdiction over certain enumerated offenses when those crimes are committed by an Indian within Indian country. 18 U.S.C. § 1153; *LaBuff*, 658 F.3d at 877; *Mathews*, 133 Idaho at 311. The General Crimes Act is the federal provision at issue with regard to Mr. Wolfe's claim that Idaho state courts lacked subject matter jurisdiction over his offense.

For those offenses not governed by the Major Crimes Act, Congress further enacted Public Law 280, which permitted the states to exercise concurrent jurisdiction over Indian affairs through legislative action. *Mathews*, 133 Idaho at 311. Pursuant to this law, the State of Idaho enacted I.C. § 67-5101, which set out certain areas upon which the State assumed and accepted jurisdiction for both civil and criminal enforcement of state law. I.C. § 67-5101; *Mathews*, 133 Idaho at 311. As was noted by the Idaho Supreme Court in *Mathews*, the State of Idaho did not assume jurisdiction over the offense of murder within I.C. § 67-5101. *Mathews*, 133 Idaho at 311.

Public Law 280 was subsequently replaced by 25 U.S.C. § 1321, which permitted the states to assume additional jurisdiction over criminal matters occurring within Indian country that are committed by or against Indians, but only with the consent of the particular Indian tribe occupying that territory. 25 U.S.C. § 1321; *Mathews*, 133 Idaho at 311. Similarly, Idaho also adopted I.C. § 67-5102, which likewise provided tribal

committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to Indian country." See 18 U.S.C. § 1152.

consent for the assumption of additional state jurisdiction for criminal or civil causes of action arising out of Indian country. I.C. § 67-5102; *Mathews*, 133 Idaho at 311; *Major*, 111 Idaho at 417. Accordingly, while the State of Idaho may assume additional jurisdiction over offenses that would otherwise be within the jurisdiction of the federal court under the General Crimes Act, it can only do so through a resolution adopted by the tribal governing body in which the tribe consents to that jurisdiction. I.C. § 67-5101.

The crime for which Mr. Wolfe was charged and convicted was not one for which the Nez Perce tribe had consented to concurrent state jurisdiction. (R., pp.344-345.) The Resolution entered into between the Nez Perce tribe and the State of Idaho does not provide for the assumption of any jurisdiction of the State of Idaho for the offense of murder in any degree. (R., pp.344-345.) In fact, the Resolution specifically provides that the State of Idaho does **not** have any jurisdiction to try such an offense occurring within Nez Perce tribal lands:

BE IT FURTHER RESOLVED, that the offenses listed in Section 1153, Title 18 United States Code, commonly known as the ten major crimes, i.e. **murder**, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, and larceny; and also embezzlement or theft of funds or property of an Indian tribal organization as provided by Federal law, **shall remain under the jurisdiction of the Federal Government** until such time as the Nez Perce Tribal Executive Committee shall enact an appropriate resolution expressing the desire of the people of the Nez Perce Reservation that the State of Idaho accept additional jurisdiction of such crimes, ...

R., p.345 (emphasis added); *see also Mathews*, 133 Idaho at 311-312 (noting that the resolution between the Nez Perce tribe and the State of Idaho expressly did not provide consent for additional jurisdiction in the state courts for the offense of murder).

Regarding whether the alleged offense in this case occurred within Indian country for purposes of federal jurisdiction, there appears to be no material dispute on this issue. The charged offense occurred within the city of Stites, which is within the

boundaries of the Nez Perce Reservation. (Confidential Exhibit P.⁷) The Nez Perce Reservation has already been deemed by the Idaho Supreme Court to be “Indian country” for purposes of determining whether the state or federal court has jurisdiction over a charged offense pursuant to both the General Crimes Act and the Major Crimes Act. See *Major*, 111 Idaho 410, 413 n.2 (1986); 18 U.S.C. §§ 1502, 1503; see also 18 U.S.C. § 1151. Accordingly, the record reflects that Mr. Wolfe’s charged offense was one that occurred within Indian country, and was an offense for which the Nez Perce tribe had not consented to Idaho State jurisdiction.

The remaining issue regarding whether there was subject matter jurisdiction in Idaho state court for the charges against Mr. Wolfe turns upon whether the alleged victim in this case qualified as an “Indian,” as that term is used in the General Crimes Act. Neither the General Crimes Act, nor the Major Crimes Act, defines the term “Indian” as used in these statutes. *LaBuff*, 658 F.3d at 877. However, the Ninth Circuit Court of Appeals has developed a two-part test for determining whether either the victim or the defendant qualifies as an “Indian” for purposes of these statutes that is instructive for this Court. First, the individual in question must possess a “sufficient ‘degree of Indian blood.’” *LaBuff*, 658 F.3d at 877 (quoting *U.S. v. Bruce*, 394 F.3d 1215, 1223-1224 (9th Cir. 2005)). Second, that individual must also have “tribal or federal

⁷ Mr. Wolfe acknowledges that the map of the Nez Perce Reservation, showing where Stites is located within the reservation, is hard to discern. However, this Court may also take judicial notice of the fact that the town of Stites is located within the Nez Perce Reservation. See I.C. 9-101(8) (courts may take judicial notice of, *inter alia*, “the geographical divisions and political history of the world. In all these cases the court may resort for its aid to appropriate books or documents of reference.”); <http://www.nezperce.org/RezInfo/NPreservation.htm> (listing Stites as a city contained within the Nez Perce Reservation) (website last visited 5/9/12).

government recognition as an Indian.” *Id.* This test appears to have been adopted by the Idaho Court of Appeals in *Lewis v. State*, 137 Idaho 882, 885 (2002).

The requirement that the individual possess a sufficient degree of “Indian blood” does not require a showing that the person in question has a majority Native American ethnic heritage. In fact, federal courts have found that this requirement is met by evidence that the person had 1/8 or 5/32 Indian blood. *LaBuff*, 658 F.3d at 877, *Bruce*, 394 F.3d at 1223-1226. Here, the evidence shows that the alleged victim had at least 3/8 Indian blood. (R., p.334.) Mr. Wolfe asserts that this evidence demonstrates that the first prong of the *Bruce* test has been met.

The question of whether there is governmental or tribal recognition of the individual’s status as a tribal member is more factually intensive. There are four general factors that have been employed by the Ninth Circuit Court of Appeals in resolving this question, although these factors are non-exclusive. *LaBuff*, 658 F.3d at 877. In order of importance, these factors are: (1) whether the individual has enrolled as a tribal member; (2) government recognition, either formally or informally, through receipt of assistance reserved only to Indians; (3) enjoyment of the benefits of tribal affiliation; and (4) social recognition as an Indian through residence on a reservation and participation in Indian social life. *Id.*; see also *Lewis*, 137 Idaho at 885.

As to the first, and most significant, consideration, the record in this case shows that the alleged victim was officially enrolled and registered with the Blackfeet Indian Nation.⁸ (R., p.334.) Not only did the alleged victim have an assigned enrollment

⁸ The Blackfeet Indian Tribe is a federally recognized tribe for purposes of determining subject matter jurisdiction under both the Major Crimes Act and the General Crimes Act. See *U.S. v. Maggi*, 598 F.3d 1073, 1080-1081 (9th Cir. 2010).

number, but the documentation submitted to the district court shows that he was “listed on the official records” of the tribe. (R., pp.334.)

The second and third considerations of whether there was government recognition of a person’s status as an Indian in light of assistance reserved for Indians, and whether the person enjoyed the benefits of tribal affiliation, also appear to be met in light of the record in this case. Among the confidential exhibits provided to the district court was evidence of medical treatment that the alleged victim received at Nimiipuu Health Center. (Confidential Exhibit M, Augment.⁹) The district court noted that these records came from the Nez Perce Tribal Medical Facilities.¹⁰ (R., p.380.) This form indicates that the alleged victim was ethnically an Indian, and that he had 1/2 Indian blood within the Blackfeet Indian tribe. (Confidential Exhibit M, Augment.) This evidence is consistent with the district court’s findings as to the alleged victim’s status as an Indian. (R., p.380.)

The Ninth Circuit in *LaBuff* has held that the receipt of medical services intended for tribal members and other non-member Indians is sufficient to establish the second and third factors regarding recognized status as a tribal member. *LaBuff*, 658 F.3d at 878. Accordingly, Mr. Wolfe asserts that the evidence of the alleged victim’s receipt of medical services through the Nimiipuu Health Center, and the indications on the documents from this center of his status as an Indian, demonstrates both government

⁹ The confidential exhibits attached to the Affidavit of Brit Groom were augmented into the record on appeal pursuant to Mr. Wolfe’s motion to augment, which was granted by the Idaho Supreme Court through its Order Granting Motion to Suspend the Briefing Schedule and Motion to Unseal Documentary Exhibits and Affidavit in Support Thereof, which was entered by the Court on April 30, 2012.

¹⁰ This Court may wish to note that Nimiipuu Health Center is a Nez Perce tribal entity. See <http://www.nimiipuuhealth.org/> (website last visited 5/9/12).

recognition of the victim's status as an Indian through the receipt of services reserved for Indians and that the alleged victim received benefits as a result of his tribal affiliation.

The last of the non-exclusive factors employed by the Ninth Circuit is whether there is evidence of social recognition as an Indian through residence on a reservation and participation in Indian social life. *LaBuff*, 658 F.3d at 877. The medical records of the victim in Mr. Wolfe's case reflect that, at least at the time these records were generated, the victim listed his residence as being in Stites, Idaho. (Confidential Exhibits B, E, F.) As has been noted, the town of Stites is located within the Nez Perce Reservation. Thus, there is at least some indication within the record that the alleged victim had long-term connections with the Nez Perce reservation, as he had listed a town within the reservation as his home address on the military documents provided to the district court.

The evidence already contained within the record demonstrates that the alleged victim was an Indian for purposes of determining subject matter jurisdiction under the General Crimes Act. Because Mr. Wolfe's offense involved an Indian victim, occurred within Indian country, and was an offense for which the Nez Perce tribe had not provided for Idaho state jurisdiction, there was no subject matter jurisdiction for his murder charge and conviction within Idaho courts. Accordingly, Mr. Wolfe asks that this Court reverse the district court's denial of his Rule 35 motions, and remand his case to the district court with instructions to vacate Mr. Wolfe's conviction. See *Lute*, 150 Idaho at 841. Alternatively, if this Court believes that additional evidence within the record is necessary to determine the jurisdictional issue, Mr. Wolfe respectfully requests that this Court remand his case to the district court for an evidentiary hearing on this issue. See *Major*, 111 Idaho at 120-121.

CONCLUSION

Mr. Wolfe respectfully requests that this Court vacate his judgment of conviction and sentence for murder because the State of Idaho lacked subject matter jurisdiction over this charge. In the alternative, Mr. Wolfe asks that this Court reverse the district court orders denying his motion for reconsideration of the denial of his Rule 35 motion, as well as the denial of his subsequent Rule 35 motion, and remand this case for a hearing on the merits of these motions.

DATED this 16th day of May, 2012.

A handwritten signature in black ink, appearing to read "Sarah E. Tompkins", is written over a horizontal line.

SARAH E. TOMPKINS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of May, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

WILLIAM WOLFE
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ISCI
PO BOX 14
BOISE ID 83707

MICHAEL J GRIFFIN
DISTRICT COURT JUDGE
E-MAILED BRIEF

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Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

SET/eas